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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. ~~814~~ 82

THE STATE OF ALABAMA, PETITIONER,

VS.

THE UNITED STATES.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

REPLY MEMORANDUM FOR THE STATE OF ALABAMA IN SUPPORT OF PETITION FOR THE WRIT.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 817.

THE STATE OF ALABAMA, PETITIONER,

v.

THE UNITED STATES.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

REPLY MEMORANDUM FOR THE STATE OF ALABAMA IN SUPPORT OF PETITION FOR THE WRIT.

In its memorandum on the petition for a writ of certiorari to the Court of Claims, the United States asserts that it would not oppose a review of the questions presented in the petition for certiorari if it were not for the belief of the United States that the Court of

Claims erred in taking jurisdiction of the case, and the United States suggests the advisability of a dismissal or denial of the petition expressly upon the ground of want of jurisdiction of that Court.

In view of the short time intervening before the date on which this petition will be submitted, it is manifestly impossible for the petitioner to brief adequately the question of jurisdiction of the Court below, which question is now raised by the respondent for the first time.

This reply memorandum is therefore filed for the purpose of presenting to the Court a brief statement of authorities in support of that jurisdiction and for the purpose of praying that the Court grant the writ and reserve consideration of this question until the hearing on the merits.

It is true, as asserted by the United States, that this Court in *Lane County v. Oregon,* 7 Wall. 71, held that, in statutes making United States notes a legal tender for debts, Congress did not intend to include within the term "debts" taxes imposed by State authority; and, in *Meriwether v. Garrett,* 102 U. S. 472, that the creditors of a municipality could not enforce in equity the collection of taxes levied by the municipality. But neither of the cases cited is authority for the proposition that an action brought by a State to collect a franchise tax from a taxpayer is not a claim founded upon an implied contract, within the meaning of Section 145 of the Judicial Code. On the contrary, this Court, in *United States v. Chamberlin,* 219 U. S. 250, 262, expressly held that *Lane County v. Oregon* and *Meriwether v. Garrett* did not involve the question whether an action in debt brought by the sovereignty imposing the tax, to recover a tax due and unpaid, could be maintained.

In fact, it has long been held that actions of assumpsit for the collection of taxes are proper in all cases where another remedy has not been made exclusive:

United States v. Washington Mills, Fed. Cas. 16,647, cited with approval in *United States v. Chamberlin, supra,* p. 260.
United States v. Minneapolis Threshing Machine Co., 229 F. 1019.
Winter v. City of Montgomery, 79 Ala. 488.
State v. Fleming, 112 Ala. 179.

Furthermore, where a statute imposes the duty to *pay* a tax, a personal obligation is thereby created from which the law will imply a promise; and an obligation so created may be enforced by an action in debt or assumpsit:

United States v. Chamberlin, supra, p. 263.
Stockwell v. United States, 13 Wall. 531.
Billings v. United States, 232 U. S., 261, 287.
United States v. Great Falls Mfg. Co., 112 U. S. 645.

Where there is a valid obligation on the part of the United States to pay a sum certain, and no particular remedy has been provided, the general laws which govern the Court of Claims should be resorted to for relief, if any can be found applicable to such a case.

United States v. Kaufman, 96 U. S. 567.

Objection to the jurisdiction of the Court below should be considered only on the merits.

Nelson v. Leland, 22 How. 48.
Canter v. American & Ocean Insurance Co. of N. Y., 2 Pet. 554.

CONCLUSION.

It is, therefore, submitted that the absence of jurisdiction of the Court of Claims is not clear, as contended by the United States, but on the other hand there is at least respectable authority establishing such jurisdiction; that the question of whether or not the Court of Claims has jurisdiction is an important question which should be considered by this Court and should not be made the basis for a denial of the writ of certiorari in a case where a State is seeking to enforce a liability against the federal government; and that the petitioner should have an opportunity to be heard upon this question.

Respectfully submitted,

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